IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 1071 OF 2003

IN

SUMMARY SUIT NO. 2765 OF 2001

Sunil S. Devidasani .....**Plffs.**

vs.

M/s. Mohan Brothers Wine

Merchants P.Ltd and anr. .....**Defnds.**

B.G. Wadhwa for the plaintiffs.

B. Saraf for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 17TH AUGUST, 2005.

P.C. :.

1. The present suit is filed on a bill of

exchange. The defence raised by the first defendant is that the suit is barred by the law of limitation. Admittedly the first defendant was not party to the suit but added pursuant to the order of amendment dated 3.11.2003. The order does not protect the plaintiff as provided under the proviso to s.21 of the Limitation Act and prima-facie therefore I am of the opinion that the suit as against the first defendant is barred by the law of limitation because the bill of exchange is of 12.11.1998 and he has added as a party only on 3.11.2003.

2. In so far as the 2nd defendant is concerned on plain reading of the bill of exchange indicates that both the defendant and the acceptor mentioned in the said bill of exchange is the same i.e. the defendant no.1. However the learned counsel for the plaintiff states that on the left hand side the defendant no.2 has signed as a acceptor in his personal capacity. If the defendant no.2 has signed the bill of exchange in his personal capacity as a acceptor then it is necessary that

the bill of exchange must be addressed to the acceptor for presentation. However admittedly the bill of exchange is addressed to the defendant no.1. In my opinion in the aforesaid circumstances, the triable issues arises in the present case. Unconditional leave to defend granted to the defendants. If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

3. In view of the fact that the plaintiffs are senior citizens hearing of the suit expedited.

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